

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

**VENABLE LLP**  
DANIEL S. SILVERMAN (SBN 137864)  
*dsilverman@venable.com*  
GREGORY J. SATER (SBN 157486)  
*gsater@venable.com*  
MATTHEW M. GURVITZ (SBN 272895)  
*mgurvitz@venable.com*  
2049 Century Park East, Suite 2100  
Los Angeles, CA 90067  
Telephone: (310) 229-9900  
Facsimile: (310) 229-9901

Attorneys for Defendant and Counterclaimant  
NUTRISCIENCE INNOVATIONS, LLC

[Additional counsel listed on signature page]

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION**

PHYTO TECH CORP. d/b/a Blue  
California, a California corporation,

Plaintiff,

v.

NUTRISCIENCE INNOVATIONS,  
LLC,

Defendant.

NUTRISCIENCE INNOVATIONS,  
LLC,

Counterclaimant,

v.

PHYTO TECH CORP. d/b/a Blue  
California, a California corporation,

Counter-  
Defendant.

CASE NO. SA CV15-00776 AG (MRWx)

Hon. Andrew J. Guilford  
Courtroom 10D

**STIPULATED PROTECTIVE ORDER**

Action Filed: May 18, 2015  
Trial Date: November 8, 2016

**1. PURPOSE AND LIMITS OF THIS ORDER<sup>1</sup>**

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply with L.R. 79-5.1 if they seek to file anything under seal. This Order does not govern the use at trial of material designated under this Order.

**2. DESIGNATING PROTECTED MATERIAL**

**2.1. Over-Designation Prohibited.** Any party or non-party who designates information or items for protection under this Order as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” (a “designator”) must only designate specific material that qualifies under the appropriate standards. To the extent practicable, only those parts of documents, items, or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified designations expose the designator to sanctions, including the Court’s striking all confidentiality designations made by that designator. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause

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<sup>1</sup> This Stipulated Protective Order substantially conforms to Judge Guilford’s Standing Protective Order, as modified by the parties to meet the needs of this Action.

1 competitive or other recognized harm. Material may not be designated if it has  
2 been made public, or if designation is otherwise unnecessary to protect a secrecy  
3 interest. If a designator learns that information or items that it designated for  
4 protection do not qualify for protection at all or do not qualify for the level of  
5 protection initially asserted, that designator must promptly notify all parties that it  
6 is withdrawing the mistaken designation.

7 **2.2. Manner and Timing of Designations.** Designation under this Order  
8 requires the designator to affix the applicable legend (“CONFIDENTIAL” or  
9 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that  
10 contains protected material. For testimony given in deposition or other proceeding,  
11 the designator shall specify all protected testimony and the level of protection  
12 being asserted. It may make that designation during the deposition or proceeding,  
13 or may invoke, on the record or by written notice to all parties on or before the  
14 next business day, a right to have up to 21 days from the deposition or proceeding  
15 to make its designation.

16 2.2.1. A party or non-party that makes original documents or  
17 materials available for inspection need not designate them for protection  
18 until after the inspecting party has identified which material it would like  
19 copied and produced. During the inspection and before the designation, all  
20 material shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY  
21 EYES ONLY. After the inspecting party has identified the documents it  
22 wants copied and produced, the producing party must designate the  
23 documents, or portions thereof, that qualify for protection under this Order.

24 2.2.2. Parties shall give advance notice if they expect a deposition  
25 or other proceeding to include designated material so that the other parties  
26 can ensure that only authorized individuals are present at those proceedings  
27 when such material is disclosed or used. The use of a document as an  
28 exhibit at a deposition shall not in any way affect its designation.

Transcripts containing designated material shall have a legend on the title page noting the presence of designated material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated, and the level of protection being asserted. The designator shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of the 21-day period for designation shall be treated during that period as if it had been designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of the 21-day period, the transcript shall be treated only as actually designated.

2.2.3. Inadvertent Failures to Designate. An inadvertent failure to designate does not, standing alone, waive protection under this Order. Upon timely assertion or correction of a designation, all recipients must make reasonable efforts to ensure that the material is treated according to this Order.

### 3. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

All challenges to confidentiality designations shall proceed under L.R. 37-1 through L.R. 37-4.

In the event that a receiving party believes, in good faith, that a document or information produced or disclosed which has been designated as protected information under the Order is not confidential or should not be designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”, the receiving party shall send the producing party a written request specifically identifying the information or document (by bates-number), sought to be disclosed and the reasons why said information or document should not be so designated and/or subject to this Order. Within ten (10) business days of receipt of such a written request, the parties shall meet and confer.

1 If the parties are unable to agree within the ten (10) day period upon a  
 2 satisfactory resolution, the receiving party may seek an order concerning such  
 3 information or documents which has previously been produced or disclosed under  
 4 the Order. The producing party shall in any proceeding or other matter concerning  
 5 such designation have the burden of proof in justifying the confidential designation  
 6 pursuant to this Order and applicable law.

7 **4. ACCESS TO DESIGNATED MATERIAL**

8 **4.1. Basic Principles.** A receiving party may use designated material only  
 9 for this litigation. Designated material may be disclosed only to the categories of  
 10 persons and under the conditions described in this Order.

11 **4.2. Disclosure of CONFIDENTIAL Material Without Further**  
 12 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
 13 designator, a receiving party may disclose any material designated  
 14 CONFIDENTIAL only to:

15 4.2.1. The receiving party's outside counsel of record in this action  
 16 and employees of outside counsel of record to whom disclosure is  
 17 reasonably necessary;

18 4.2.2. The officers, directors, and employees of the receiving party  
 19 to whom disclosure is reasonably necessary, and who have signed the  
 20 Agreement to Be Bound (Exhibit A);

21 4.2.3. Experts retained by the receiving party's outside counsel of  
 22 record to whom disclosure is reasonably necessary, and who have signed  
 23 the Agreement to Be Bound (Exhibit A);

24 4.2.4. The Court and its personnel;

25 4.2.5. Outside court reporters and their staff, professional jury or  
 26 trial consultants, and professional vendors to whom disclosure is reasonably  
 27 necessary, and who have signed the Agreement to Be Bound (Exhibit A);  
 28

4.2.6. During their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the Agreement to Be Bound (Exhibit A); and

4.2.7. The author or recipient of a document containing the material, or a custodian or other person who otherwise possessed or knew the information.

**4.3. Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY Material Without Further Approval.** Unless permitted in writing by the designator, a receiving party may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

4.3.1. The receiving party’s outside counsel of record in this action and employees of outside counsel of record to whom it is reasonably necessary to disclose the information (“Outside Counsel”);

4.3.2. The Court and its personnel;

4.3.3. Outside court reporters and their staff, professional jury or trial consultants, and professional vendors to whom disclosure is reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit A); and

**4.4. Procedures for Approving or Objecting to Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel or Experts.** Unless agreed to in writing by the designator:

4.4.1. A party seeking to disclose to in-house counsel any material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written request to the designator providing the full name of the in-house counsel, the city and state of such counsel’s residence, and such counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine present or potential involvement in any competitive decision-making.



1           4.4.2. A party seeking to disclose to an expert retained by outside  
2 counsel of record any information or item that has been designated  
3 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first make  
4 a written request to the designator that (1) identifies the general categories  
5 of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY information  
6 that the receiving party seeks permission to disclose to the expert, (2) sets  
7 forth the full name of the expert and the city and state of his or her primary  
8 residence, (3) attaches a copy of the expert's current resume, (4) identifies  
9 the expert's current employer(s), (5) identifies each person or entity from  
10 whom the expert has received compensation or funding for work in his or  
11 her areas of expertise (including in connection with litigation) in the past  
12 five years, and (6) identifies (by name and number of the case, filing date,  
13 and location of court) any litigation where the expert has offered expert  
14 testimony, including by declaration, report, or testimony at deposition or  
15 trial, in the past five years. If the expert believes any of this information at  
16 (4) - (6) is subject to a confidentiality obligation to a third party, then the  
17 expert should provide whatever information the expert believes can be  
18 disclosed without violating any confidentiality agreements, and the party  
19 seeking to disclose the information to the expert shall be available to meet  
20 and confer with the designator regarding any such confidentiality  
21 obligations.

22           4.4.3. A party that makes a request and provides the information  
23 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material  
24 to the identified in-house counsel or expert unless, within seven (7) days of  
25 delivering the request, the party receives a written objection from the  
26 designator providing detailed grounds for the objection.

27           4.4.4. Upon receipt of a written objection pursuant to paragraph  
28 4.4.3, the parties must meet and confer within ten (10) days of the

objection. If the parties do not reach an agreement within ten (10) days of the meet and confer, the receiving party may seek an order permitting the disclosure of the designated material to the identified in-house counsel or expert. If the receiving party seeks such an order, the receiving party may not disclose the designated material to the identified in-house counsel or expert until the Court issues an order regarding the dispute. In seeking such an order pursuant to this subsection, the receiving party shall proceed under L.R. 37-1 through L.R. 37-4 and the designating party shall have the burden of proof in justifying the reason why it should not be disclosed to the identified in-house counsel or expert.

**5. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
 PRODUCED IN OTHER LITIGATION**

**5.1. Subpoenas and Court Orders.** This Order in no way excuses non-compliance with a lawful subpoena or court order. The purpose of the duties described in this section is to alert the interested parties to the existence of this Order and to give the designator an opportunity to protect its confidentiality interests in the court where the subpoena or order issued.

**5.2. Notification Requirement.** If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, that party must:

**5.2.1.** Promptly notify the designator in writing. Such notification shall include a copy of the subpoena or court order;

**5.2.2.** Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and



1                   **5.2.3.** Cooperate with all reasonable procedures sought by the  
2                   designator whose material may be affected.

3                   **5.3. Wait For Resolution of Protective Order.** If the designator timely  
4                   seeks a protective order, the party served with the subpoena or court order shall not  
5                   produce any information designated in this action as CONFIDENTIAL or  
6                   HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY before a determination  
7                   by the court where the subpoena or order issued, unless the party has obtained the  
8                   designator's permission. The designator shall bear the burden and expense of  
9                   seeking protection of its confidential material in that court.

10                  **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

11                  If a receiving party learns that, by inadvertence or otherwise, it has  
12                  disclosed designated material to any person or in any circumstance not authorized  
13                  under this Order, it must immediately (1) notify in writing the designator of the  
14                  unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies  
15                  of the designated material, (3) inform the person or persons to whom unauthorized  
16                  disclosures were made of all the terms of this Order, and (4) use reasonable efforts  
17                  to have such person or persons execute the Agreement to Be Bound (Exhibit A).

18                  **7. INADVERTENT PRODUCTION OF PROTECTED MATERIAL**

19                  If a producing party inadvertently produces CONFIDENTIAL or HIGHLY  
20                  CONFIDENTIAL – ATTORNEY EYES ONLY without designating it as such in  
21                  accordance with this Order, the producing party shall notify all receiving parties of  
22                  the proper designation of the protected information as soon as practical after  
23                  discovery of the error by the producing party. The producing party shall provide  
24                  the receiving parties with a replacement of the protected information marked in  
25                  accordance with this Order. Upon receipt of the properly designated document or  
26                  information: (a) the document or information shall be treated by the receiving  
27                  parties as if it had been timely designated as protected information under this  
28                  Order; and (b) the receiving parties shall use reasonable efforts to identify any

1 other persons or entities to whom the information in question was given. It shall  
2 then be the burden of the receiving parties to collect in good faith all such  
3 protected information from persons and entities who would not have been entitled  
4 access thereto if the document or information had been so designated at the outset.  
5 The receiving parties shall use reasonable efforts to protect from disclosure any  
6 unmarked copies of the protected information in their possession, by destroying or  
7 returning to the producing party any unmarked copies of the protected information  
8 in their possession. The inadvertent disclosure or inadvertent mis-marking by a  
9 producing party of documents or information that the producing party believes to  
10 be confidential shall not automatically be deemed a waiver in whole or in part of  
11 the producing party's claim of confidentiality, either as to the specific document or  
12 information disclosed or as to any other document or information relating thereto  
13 or concerning the same or related subject matter. However, any party may claim  
14 that the intentional disclosure of protected information by the producing party to  
15 anyone other than the producing party and its counsel, without the confidential  
16 designation, be deemed a waiver of any claimed protection.

17 **8. INADVERTENT PRODUCTION OF PRIVILEGED MATERIAL**

18 When a producing party gives notice that certain inadvertently produced  
19 material is subject to a claim of privilege or other protection ("Privileged  
20 Material"), the obligations of the receiving parties are those set forth in Federal  
21 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
22 whatever procedure may be established in an e-discovery order that provides for  
23 production without prior privilege review pursuant to Federal Rule of Evidence  
24 502(d) and (e).

25 If a Party inadvertently or mistakenly produces Privileged Material, such  
26 production shall in no way prejudice or otherwise constitute a waiver of, or  
27 estoppels as to, any claim of privilege or work-product immunity for the  
28 inadvertently produced document or any other document covering the same or a

1 similar subject matter under applicable law, including Federal Rule of Evidence  
2 502. Pursuant to Fed. R. Evid. 502(d), the inadvertent production of Privileged  
3 Material in this proceeding shall not constitute a waiver of any applicable  
4 privilege, protection or prohibition from disclosure of that Privileged Material in  
5 any other federal or state proceeding.

6 If a Party has inadvertently or mistakenly produced Privileged Material, and  
7 if the Party makes a written request for the return of such Privileged Material, the  
8 Privileged Material for which a claim of inadvertent production is made (including  
9 any analyses, memoranda or notes which were internally generated based upon  
10 such inadvertently-produced Privileged Material), as well as all copies, shall  
11 return all copies, or a provide a signed verification by Outside Counsel for the  
12 Receiving Party certifying that all copies have been destroyed shall be provided to  
13 Outside Counsel for the Party, no later than ten (10) business days regardless of  
14 whether the Receiving Party disputes the claim of privilege. The Party shall  
15 provide sufficient information to the Receiving Party regarding the asserted  
16 privilege(s), in the form of a privilege log. If the Receiving Party disputes the  
17 assertion of privilege, the Receiving Party may move the Court for an order  
18 compelling production of the material, but such motion shall not assert the fact or  
19 circumstance of the inadvertent production as a ground for entering such an order.  
20 Subject to the Court's direction, resolution of the issue may include the Court's  
21 review of the potentially Privileged Material *in camera*. Notwithstanding this  
22 Order, no Party will be prevented from moving the Court for an order compelling  
23 the production of documents for which the privilege has been waived pursuant to,  
24 *inter alia*, the crime-fraud exception.

25 If the receiving party believes that any material produced or disclosed to it  
26 may be subject to any privilege, immunity, or similar protection, it must stop  
27 reading and promptly notify the producing party and may not read or otherwise  
28 view the unread portion of such material until the court orders otherwise or the

1 producing party gives permission. The receiving party must promptly notify the  
2 producing party that it has received materials that likely contain privileged  
3 information, including the bates numbers of those specific documents, and return  
4 all copies to the producing party.

5 **9. NO WAIVER OF RIGHT TO APPROPRIATELY WITHHOLD OR**  
6 **REDACT**

7 Notwithstanding the provisions of this Order, Designating Parties may  
8 redact from any produced information, whether designated as Protected  
9 Information or not, any information containing Privileged Material or any  
10 irrelevant trade secrets or other irrelevant highly confidential research,  
11 development or commercial information, or any other data protected from  
12 disclosure by State or Federal regulations. If, after reviewing information  
13 containing a redaction a Receiving Party has a good faith basis for challenging the  
14 redaction, the Parties shall initially attempt to resolve the issue through  
15 discussions. If those discussions prove unsuccessful, the challenging Party may  
16 move for a ruling by the Court on whether the information is entitled to redaction,  
17 which may, where legally permitted, necessitate an *in camera* inspection of the  
18 document in non-redacted form by the Court. If the Court orders that the redacted  
19 portion of the information should remain redacted, then the redacted portion of said  
20 Discovery Material may not be used as evidence by any Party at trial or at a  
21 hearing and may not be relied upon by any Party's Experts. If the Court orders that  
22 the redacted portion of the information is not entitled to redaction, and if the Court  
23 orders the Designating Party to produce the information without redaction, then the  
24 Designating Party shall produce the information in non-redacted form. Unless  
25 expressly ordered otherwise by the Court, a finding that information is not entitled  
26 to redaction shall have no effect on the status of the information as Protected  
27 Information.  
28

**10. FILING UNDER SEAL**

Without written permission from the designator or a Court order, a party may not file in the public record in this action any designated material. A party seeking to file under seal any designated material must comply with L.R. 79-5.1. Filings may be made under seal only pursuant to a court order authorizing the sealing of the specific material at issue. The fact that a document has been designated under this Order is insufficient to justify filing under seal. Instead, parties must explain the basis for confidentiality of each document sought to be filed under seal. Because a party other than the designator will often be seeking to file designated material, cooperation between the parties in preparing, and in reducing the number and extent of, requests for under seal filing is essential. If a receiving party's request to file designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then the receiving party may file the material in the public record unless (1) the designator seeks reconsideration within four days of the denial, or (2) as otherwise instructed by the Court.

**11. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, each party shall return all designated material to the designator or destroy such material, including all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any designated material. The receiving party must submit a written certification to the designator by the 60-day deadline that (1) identifies (by category, where appropriate) all the designated material that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the designated material. This provision shall not prevent counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

1 product, even if such materials contain designated material. Any such archival  
2 copies remain subject to this Order.

3 DATED: October 26, 2015

VENABLE LLP  
DANIEL S. SILVERMAN  
GREGORY J. SATER  
MATTHEW M. GURVITZ

6 By: /s/ Matthew M. Gurvitz  
Matthew M. Gurvitz

8 Attorneys for Defendant and  
Counterclaimant NUTRISCIENCE  
9 INNOVATIONS, LLC

10 DATED: October 26, 2015

McDERMOTT WILL & EMERY LLP  
DANIEL R. FOSTER (SBN 179753)  
*dfoster@mwe.com*  
MANDY H. KIM (SBN 267513)  
*mhkim@mwe.com*  
4 Park Plaza, Suite 1700  
Irvine, CA 92614  
Telephone: 949.851.0633  
Facsimile: 949.851.9348

16 By: /s/ Daniel F. Foster  
Daniel F. Foster

18 Attorneys for Plaintiff and Counter-  
Defendant PHYTO TECH CORP.  
d/b/a BLUE CALIFORNIA

20 **ATTESTATION REGARDING SIGNATURES**

21 I, Matthew M. Gurvitz, attest that all signatories listed, and on whose behalf  
22 the filing is submitted, concur in the filing's content and have authorized the filing.

24 DATED: October 26, 2015

/s/ Matthew M. Gurvitz  
Matthew M. Gurvitz



VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

ORDER

Having considered the foregoing Stipulation, and good cause appearing therefor, the exchange of confidential and/or highly confidential information and discovery in the above-captioned action shall be made in accordance with the terms of the Stipulation for Protective Order.

**IT IS SO ORDERED.**

Dated: October 27, 2015



HON. MICHAEL R. WILNER  
MAGISTRATE JUDGE

EXHIBIT AAGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have  
 read in its entirety and understand the Protective Order that was issued by the  
 United States District Court for the Central District of California on \_\_\_\_\_ [date] in  
 the case of Phyto Tech Corp. d/b/a Blue California v. NutriScience Innovations,  
 LLC, Case No SACV15-00776-AG (MRWx). I agree to comply with and to be  
 bound by all the terms of this Protective Order, and I understand and acknowledge  
 that failure to so comply could expose me to sanctions and punishment for  
 contempt. I solemnly promise that I will not disclose in any manner any  
 information or item that is subject to this Protective Order to any person or entity  
 except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District  
 Court for the Central District of California for the purpose of enforcing this Order,  
 even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and  
 telephone number] as my California agent for service of process in connection  
 with this action or any proceedings related to enforcement of this Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: \_\_\_\_\_